

CONDITIONAL SALE AGREEMENT

6717

Dated as of August 16, 1972

RECORDATION NO. ~~FILED & RECORDED~~

GENERAL MOTORS CORPORATION,  
(ELECTRO-MOTIVE DIVISION),  
Seller,

AUG 21 1972-1116

and

THE BELT RAILWAY COMPANY OF CHICAGO,  
Buyer,

FOR PURCHASE OF

SIX 2000 H.P. MODEL GP38-2 DIESEL LOCOMOTIVES

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AGREEMENT AND ASSIGNMENT

Dated as of August 16, 1972

GENERAL MOTORS CORPORATION,  
(ELECTRO-MOTIVE DIVISION)

and

BANKERS TRUST COMPANY

THIS AGREEMENT dated as of August 16, 1972, by and between GENERAL MOTORS CORPORATION, (ELECTRO-MOTIVE DIVISION), a corporation organized under the laws of the State of Delaware with an office in the Village of McCook and State of Illinois (hereinafter called the "Manufacturer"), and THE BELT RAILWAY COMPANY OF CHICAGO, a corporation organized under the laws of the State of Illinois, with an office in the Village of Bedford Park, State of Illinois (hereinafter called the "Railroad"),

W I T N E S S E T H :

In consideration of the mutual premises, covenants and agreements hereinafter set forth the parties hereto do hereby agree as follows:

1. CONSTRUCTION AND SALE. The Manufacturer will construct, sell and deliver to the Railroad and the Railroad will purchase from the Manufacturer and accept delivery as hereinafter provided and pay therefor as hereinafter set forth locomotives (any one of which is hereinafter referred to as "Locomotive" and more than one or all of which are hereinafter referred to as "Locomotives") as follows:

Six (6) 2000 H.P. Model GP38-2 Diesel Locomotives, bearing the Railroad's road numbers 490 through 495, as described by the Manufacturer's Proposal No. 607 and in accordance with specifications contained therein and modifications thereof agreed upon in writing between the Railroad and the Manufacturer.

2. DELIVERY. The Manufacturer will deliver the Locomotives to the Railroad f.o.t. EMD Plant, McCook, Illinois, on or before September 6, 1972.

On delivery of the Locomotives by the Manufacturer, the Railroad assumes all further responsibility or risk of loss or damage with respect to the Locomotives so delivered, except as otherwise stated in this Agreement or terms and conditions of Proposal No. 607.

The Manufacturer's obligation as to time of delivery is subject, however, to delays and/or defaults resulting from any and all causes beyond the Manufacturer's reasonable control, whether or not existing on the date of this Agreement, including,

but not limited to, acts of God, acts of government, such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes or other labor conditions, accidents, fire, flood, explosion, damage to plant, equipment or facilities, epidemics, quarantine restrictions, delays or defaults of subcontractors, failure to receive necessary materials or supplies, inability to obtain fuel, light or power, or absence of usual means of transportation, acts or omissions of the Railroad, including noncompliance with payment terms, changes in the specification requested by the Railroad and agreed to by the Manufacturer and any delays resulting from such cause or causes shall extend the time of completion and delivery for the period during which the effect of such causes persist. The Manufacturer shall in no event be liable for special or consequential damages for delays in delivery due to any cause.

The Locomotives shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Railroad, and Manufacturer shall grant to such inspector or other authorized representative reasonable access to its plant. Upon completion of construction of each Locomotive, such Locomotive shall be presented to an authorized representative of the Railroad at the Railroad's Clearing Yard, Bedford Park, Illinois, or at such other place in the United States as the Railroad may designate. If such Locomotive conforms to specifications such representative of the Railroad shall execute a certificate of acceptance (hereinafter called the "Certificate of Acceptance") stating that such Locomotive has been inspected and accepted by him on behalf of the Railroad as conforming in all respects to the requirements and provisions of this Agreement. Such Certificate of Acceptance shall constitute conclusive evidence that the Locomotive conforms to specifications and is acceptable to the Railroad in all details. The Certificate of Acceptance shall be delivered to the Manufacturer at or after the time of the delivery of the Locomotive to the Railroad.

The Manufacturer will furnish a competent service representative to assist the Railroad's supervisory personnel in placing each of the Locomotives in working condition. The Railroad will provide free of charge all necessary labor, material, supplies and transportation on lines owned or controlled by the Railroad to each such service representative as well as to any person that may be provided by the Manufacturer at the Railroad's request to instruct the Railroad's engineers in the operation of the Locomotives or that may be

sent by the Manufacturer to investigate complaints regarding the Locomotives.

3. PURCHASE PRICE. The Purchase Price of each of the six (6) Locomotives shall be as follows:

Base Price per Locomotive	\$ 230,500.00
Locomotive Modifications	11,321.00
	<u>\$ 241,821.00</u>
Retailer's Occupational Tax	12,091.05
	<u>                    </u>
Total Price per Locomotive, f.o.t., EMD Plant, McCook, Illinois	\$ 253,912.05
	x 6
Total Price for six (6) Locomotives	<u>\$1,523,472.30</u>

Conditional only upon the receipt and acceptance of any Locomotive, which shall be conclusively presumed from the execution of the Certificate of Acceptance, the Railroad hereby promises to pay to the Manufacturer at its office, at McCook, Illinois, or at such place in the United States of America as the Manufacturer may designate, the aforesaid purchase price of such Locomotive as follows:

A total of Fifty Three Thousand Nine Hundred Twelve Dollars and five cents (\$53,912.05) in cash on the date of settlement with respect to such Locomotive and Two Hundred Thousand and no/100 Dollars (\$200,000.00) payable in forty (40) consecutive quarterly installments, each of which installments shall be in the principal amount of Five Thousand and no/100 Dollars (\$5,000.00), together with interest from the date of settlement with respect to such Locomotive on the balance of such purchase price remaining unpaid, at a rate per annum (calculated on a thirty-day month 360-day year basis) which shall be 1/2 of 1% per annum above the best rate which Bankers Trust Company charges from time to time on ninety-day unsecured commercial loans (herein called the "Current Lending Rate") in effect at Bankers Trust Company on and after the date hereof, which rate per annum shall change as and when said Current Lending Rate shall change, the first installment of principal and interest to be payable on the January 1, April 1, July 1 or October 1 immediately following the date of delivery and subsequent instalments to be payable on each January 1, April 1, July 1 or October 1 thereafter. Any change in interest resulting from a change in the Current Lending Rate of Bankers Trust Company shall be effective on the effective date of each change in the Current Lending Rate.

The date of settlement with respect to any Locomotive shall be such date, neither prior to nor more than ten days following the date of delivery of such Locomotive, as shall be fixed by the Railroad by written notice delivered to the Manufacturer and its assigns hereunder at least five business days prior to the date of settlement designated therein.

All payments provided for in this agreement will be made by the Railroad in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

If any payment required to be made on the balance of the purchase price shall become due and payable on a Saturday, Sunday or public holiday under the laws of the State of New York, the due date of such payment shall be extended to the next succeeding full business day and interest shall be payable at the rate set forth above during such extension.

In the event of any change or modification made in the specifications, the amount by which such change or modification increases or decreases the cost of any of the Locomotives shall be added to or subtracted from, as the case may be, the price of such Locomotive. The first installment payment to be made by the Railroad to the Manufacturer with respect to such Locomotive, as provided herein shall be increased or decreased accordingly. In the event, however, that after payment of the first installment payment as so reduced, the balance of the purchase price as set forth above would exceed 80% of the then purchase price of such Locomotive, the balance of the purchase price set forth above shall be reduced to an amount equal to 80% of the then purchase price.

The Railroad may prepay upon the due date of any installment of the purchase price hereunder any sum of the principal in an amount of Five Thousand and no/100 Dollars (\$5,000.00) or any multiple thereof, together with interest accumulated to the date of such payment on such sum so prepaid. All such principal sums so prepaid shall be applied toward the payment of installments in inverse order of maturity.

The Railroad agrees that, anything herein to the contrary notwithstanding, if (i) this Agreement shall have been assigned to Bankers Trust Company ("Bankers") and (ii) this Agreement shall not have been purchased from Bankers on or before the 90th consecutive calendar day (the "Prepayment Date") from the time of the first payment made pursuant to this Section 3, then the Railroad shall prepay or cause to be

prepaid to Bankers an amount equal to the then unpaid principal balance owing hereunder plus accrued but unpaid interest to the date of such prepayment (such amount to be called the "Prepayment"), provided, however, that Bankers may extend the Prepayment Date, in its sole discretion, for a period not exceeding 90 consecutive calendar days from the Prepayment Date as originally calculated (the "Extended Prepayment Date"). The Railroad further agrees that its failure to pay in full any Prepayment on the Prepayment Date or Extended Prepayment Date, as the case may be, shall be an additional event of default under Section 17 hereof as if specifically enumerated in such Section 17. Upon the purchase of this Agreement from Bankers, the provisions of this paragraph shall be of no further force or effect.

4. TAXES. All payments to be made by the Railroad hereunder will be free of expenses to the Manufacturer for collection or other charges and of the amount of any local, state or federal taxes (other than income, gross receipts, excess profits taxes and similar taxes) or licenses levied or imposed upon or measured by this Agreement and/or upon any assignment of or interest in any assignment of this Agreement and/or any sale, use, payment, shipment or delivery under the terms hereof, all of which expenses, taxes, and licenses the Railroad assumes and agrees to pay in addition to the purchase price of the Locomotives. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Locomotives or for the use thereof or upon the earnings arising therefrom or the operation thereof or upon the Manufacturer by reason of its ownership thereof by any country, state or political subdivision thereof in which the Locomotives may be located or which shall have jurisdiction over the Locomotives or any of them, and the Railroad agrees to keep at all times all of the Locomotives and every part thereof free and clear of all taxes, assessments, liens and encumbrances which may in any way affect the title of the Manufacturer. If any such expenses or taxes shall have been paid by the Manufacturer the Railroad shall reimburse the Manufacturer on presentation of invoice.

5. TITLE TO THE EQUIPMENT. The Manufacturer shall and hereby does retain the full legal title to and property in the Locomotives until the Railroad shall have made all of the payments and shall have kept and performed all of the covenants in this Agreement provided to be made, kept or performed by the Railroad notwithstanding the delivery of the Locomotives to and the possession and use thereby by the Railroad as herein provided.

The Railroad so long as it shall not be in default under this Agreement shall be entitled to the possession and use of the Locomotives as herein provided, subject to the terms and conditions herein contained.

The Railroad will cause each Locomotive to be kept numbered with its identifying road number and will keep and maintain, plainly, distinctly, permanently and conspicuously lettered on each side of each unit of each of the Locomotives a stencil painted in a contrasting color setting forth the name of the Manufacturer and/or of the Manufacturer's assignee, as the case may be, in letters not less than one inch in height followed by the word "Owner" or other appropriate words designated by the Manufacturer, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of Manufacturer to the Locomotives and its rights under this Agreement. The Railroad will not place any of the Locomotives in operation or exercise any control or dominion over any part thereof until the stencils, lettered as aforesaid, have been painted in a contrasting color on both sides of each unit of the Locomotives. The Railroad will not change the road numbers of the Locomotives except in accordance with a statement of new road numbers to be substituted therefor, which shall previously have been filed with the Manufacturer by the Railroad and consented to by the Manufacturer and filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

Except as above provided the Railroad will not allow the name of any person, association or corporation to be placed on the Locomotives or any replacements thereof as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Locomotives to be lettered with appropriate words or marks for convenience of identification of the Railroad's interest therein.

When and only when the Manufacturer has been paid the full purchase price of the Locomotives, together with the interest and any and all other payments as herein provided, and all of the Railroad's covenants and conditions herein contained have been performed by the Railroad, absolute right to the possession of, title to and property in the Locomotives shall pass to and vest in the Railroad without further transfer or action on the part of the Manufacturer except that the Manufacturer will, if requested by the Railroad so to do, execute and deliver to the Railroad a bill of sale of the

Locomotives transferring the title to and property in them to the Railroad free of all liens and encumbrances created or retained hereby and will execute for record or for filing in public office such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Locomotives. The delivery to the Railroad by the assignee or successive assignees of General Motors Corporation, (Electro-Motive Division), of a properly executed release and discharge of this Agreement shall be deemed full compliance by said assignee with the provisions of this Section, and shall operate to effectively and sufficiently evidence that neither Manufacturer nor such assignee or successive assignees has any interest in or claim to the Locomotives.

6. REPLACEMENT. In the event of loss or destruction of or irreparable damage to any of the Locomotives from any cause whatsoever prior to the payment in full of the total purchase price herein provided together with interest thereon and all other payments required hereby the Railroad shall promptly and fully inform the Manufacturer in regard to such loss, destruction or damage. The Railroad shall at its election promptly pay to the Manufacturer a sum equal to the then unpaid balance applicable to such Locomotive or Locomotives with interest thereon to the date of payment or shall replace each such Locomotive at its own cost with a locomotive of similar type and of substantially as good material or construction as that lost, destroyed or damaged and having a cost or fair value (whichever is less) at least equal to the fair value if in good repair of the Locomotive replaced at the time of replacement. The Railroad will cause any such Locomotive to be marked as provided in Article 5 hereof and to be numbered with the same road number as the Locomotive so replaced. Any and all such replacements of Locomotives or any of them and all and any parts shall constitute accessions to the Locomotives and all replacements of Locomotives shall be deemed to be specific after acquired property covered by this Agreement and in any case all such replacements of Locomotives and parts shall be subject to all of the terms and conditions of this Agreement as though part of the original Locomotives delivered hereunder and included in the word "Locomotives" as used in this Agreement. Title to all such replacement Locomotives shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Manufacturer subject to the provisions hereof, and the Railroad shall deliver or cause to be delivered to the Manufacturer, in connection with each such replacement, all documents necessary



to evidence the Manufacturer's title thereto and an opinion of counsel (which may be counsel to the Railroad) satisfactory to the Manufacturer to the effect that title to such replacement of Locomotive is validly vested in the Manufacturer, free of all claims, liens and encumbrances except only the rights of the Railroad under this Agreement, and no further action is required in connection with such replacement, the subjection to this Agreement of such replacement of Locomotive and the protection of the rights of the Manufacturer hereunder, or, stating such further action, and to the effect that it has been taken.

7. INSURANCE. The Railroad will at all times and at its own expense keep the Locomotives insured (with loss payable to the Manufacturer or the Railroad as their interest may appear) in a company or companies approved by the Manufacturer against loss, damage or destruction thereof due to any and all causes, including, without limitation, fire, lightning, wreck, derailment, collision, flood, tornado, cyclone, sabotage, riot or civil commotion in sums and by policies in an amount not less than the unpaid balance of the purchase price owing on the Locomotives; provided that the policies for such insurance may provide insurance subject to a customary deductible. Each policy in respect of such insurance shall provide for ten days' prior written notice to the Manufacturer of the cancellation of any of such insurance, and shall provide further that, as to the interest of the Manufacturer, such insurance shall not be altered or impaired by any act or omission of anyone other than the Manufacturer. Any moneys paid under any insurance policy shall be applied to the then unpaid balance applicable to the Locomotive with respect to which the moneys are so paid or shall be applied toward the replacement or repair of such Locomotive. In the event that the moneys are to be applied to such replacement or repair they shall be retained by the Manufacturer until replacement or repair of the Locomotive or Locomotives lost, destroyed or damaged, but upon proof satisfactory to the Manufacturer of such replacement or repair and if the Railroad is not then in default in any of the obligations hereunder the Manufacturer shall pay over such money to the Railroad. Any moneys receivable by or payable to the Railroad from any railroad or other person or corporation because of loss or destruction of or damage to any such Locomotive or Locomotives shall be paid over to the Manufacturer to be held and applied by it as aforesaid.

In the event the Railroad shall fail to keep the Locomotives insured as above provided, the Manufacturer, without impairment of any of its rights and remedies by reason of such default, may, but shall not be required to, obtain appropriate insurance and pay the premium or premiums therefor and in such event the Railroad shall and will reimburse the Manufacturer for the amount of the premium so paid with interest at the rate of 6% per annum thereon from the date of payment.

8. MAINTENANCE AND REPAIR. The Railroad will at all times maintain the Locomotives in good order and repair at its own expense in accordance with the Railroad's approved maintenance practices, but recognizing the Manufacturer's recommendations for guidance to the extent consistent with the specific service conditions of the Railroad. The Railroad shall bear the risk of, and shall not be released from its obligations hereunder in case of, any and all damage, loss or destruction of said Locomotives from whatever cause arising. Said Locomotives shall include all parts thereof including such parts as constitute accessions to said Locomotives.

9. MANUFACTURER'S WARRANTY OF WORKMANSHIP AND MATERIAL. The Manufacturer warrants each Locomotive specified herein to be free from defects in material and workmanship under normal use and service; its obligation under this warranty being limited to making good at its factory any part or parts thereof, which shall be returned to it with transportation charges prepaid, within two (2) years after delivery of such equipment to the Railroad, or before the Locomotive has been 250,000 miles in scheduled service, whichever event shall first occur, and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective.

This warranty shall not apply to any Locomotive components which shall have been repaired or altered unless repaired or altered by the Manufacturer or its authorized service representatives, if, in its judgment, such repair or alterations affect the stability of the equipment or if the equipment has been subject to misuse, negligence or accident, nor shall it apply to specialties not of the Manufacturer's own specification or design.

The Manufacturer reserves the right to make changes in design or add any improvements on equipment at any time without incurring any obligation to install same on equipment previously purchased.

This warranty is expressly in lieu of all other warranties express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the Manufacturer's part, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the sale of its equipment.

10. COMPLIANCE WITH LAWS, RULES AND REGULATIONS. Until the total purchase price herein provided for and all other sums of money payable by the Railroad hereunder shall have been fully paid by the Railroad, the Railroad will comply in all respects with all laws of the United States and of the States and Territories in which its operations involving the Locomotives may extend, and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Locomotives. In the event that said laws or rules require the alteration of the Locomotives the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules until the total purchase price together with interest and all other payments required hereby shall have been fully paid by the Railroad; provided, however, that the Railroad may, in good faith, contest in any reasonable manner the application of any such law or rule which does not, in the judgment of the Manufacturer, affect the Manufacturer's title in and to the Locomotives.

11. REPORTS AND INSPECTIONS. The Railroad will furnish to the Manufacturer, when requested and at least once in every year until the total purchase price together with interest and all other payments required hereby shall have been fully paid by the Railroad, an accurate inventory of the Locomotives in actual service, the numbers and the description of such Locomotives as may have been destroyed and replaced by others, and the then location of said Locomotives. In addition thereto the Railroad will furnish to the Manufacturer, when requested and at least once in each year until the total purchase price together with interest and all other payments required hereby shall have been fully paid by the Railroad, a report of inspection by an authorized representative of the Railroad, or, if the Manufacturer so requests, by a competent disinterested party, satisfactory to the Manufacturer, certifying that said Locomotives have been maintained, and are, in good order and repair.

The Railroad will promptly and fully inform the Manufacturer of any loss or destruction of any of the Locomotives and of any substantial repairs made or being made upon them or any of them. If requested by the Manufacturer the Railroad will furnish to the Manufacturer a report of an authorized representative of the Railroad or, if the Manufacturer so requests, of a competent disinterested party, satisfactory to the Manufacturer, covering the nature and extent of any damage to the Locomotives and the satisfactory repair thereof.

The Manufacturer may, but shall be under no obligation to, inspect the Locomotives at any reasonable time or times until the total purchase price together with interest and all other payments required hereby has been fully paid by the Railroad. The Railroad, in so far as it may legally do so, will supply free transportation over its lines to designated agents of the Manufacturer for the purpose of enabling such agents to reach the point or points where the Locomotives are in operation, for the purpose of making such inspection.

12. PROHIBITION AGAINST LIENS. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad and its successors or substitutes or assigns which, if unpaid, might become a lien or a charge upon the Locomotives, or any of them, equal or superior to the title of the Manufacturer therein, but shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of the Manufacturer in and to the Locomotives.

13. RAILROAD'S INDEMNITY. The Railroad will save, indemnify and keep harmless the Manufacturer from and against all losses, damages, injuries, claims and demands whatsoever, arising on account of the use or operation of the Locomotives. This covenant of indemnity shall survive the termination of this Agreement.

The Railroad will bear the risk and shall not be released from its obligations hereunder in the event of any damage to, or the destruction or loss of any or all of the Locomotives; provided, however, that the Manufacturer and any successors to its manufacturing property and business shall not, as to the Locomotives, be relieved from its warranty covering workmanship and material hereinbefore in Article 9 set forth.

14. PATENT INDEMNITIES. Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad because of the use in or about the construction or operation of the Locomotives, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Manufacturer from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design specified by the Railroad and not developed or purported to be developed by the Manufacturer, or article or material specified by the Railroad and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator of any design specified by the Railroad and not developed or purported to be developed by the Manufacturer or against the seller or sellers of any designs or articles or materials so specified by the Railroad and purchased or otherwise acquired by the Manufacturer for use in or about the construction or operation of the Locomotives, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other right and the Manufacturer further agrees to execute and deliver to the Railroad all and every such further assurance as may be reasonably requested by the Railroad, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Railroad of any claim known to the Manufacturer from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Manufacturer of any claim known to the Railroad from which liability may be charged against the Manufacturer hereunder.

15. ASSIGNMENTS BY THE MANUFACTURER. All or any of the rights, benefits and advantages of the Manufacturer under

this Agreement including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Manufacturer and reassigned at any time and from time to time, provided, however, that no such assignment shall subject any assignee to or relieve the Manufacturer or the successor or successors to its manufacturing property and business from any of the obligations of the Manufacturer to construct and deliver the Locomotives herein contracted to be delivered in accordance with the specifications or to respond to its warranties or indemnities, contained in Articles 9 and 14 hereof, or relieve the Railroad of its obligation to the Manufacturer under Articles 13 and 14 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Manufacturer's right, title and interest in and to the Locomotives and each and every part thereof, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee and any consent required hereunder shall be obtained from such assignee.

The Railroad recognizes that it is the custom of locomotive manufacturers to sell or discount agreements of this character and understands that the sale of this Agreement, or of some or all of the rights of the Manufacturer hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the purchase of this Agreement or of all or any of the rights of the Manufacturer hereunder and for the purpose of inducing such purchase, that in the event of such purchase and of the assignment of this Agreement by the Manufacturer as hereinbefore provided, the rights of such assignee to the entire unpaid purchase price or such part thereof as may be assigned, together with interest thereon as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer or the successor or successors to its manufacturing property and business in respect of the

Locomotives or the manufacture, construction, delivery, or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer or any other person. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Manufacturer and the successor or successors to its manufacturing property and business. The provisions of this paragraph may be relied upon by any such assignee as a continuing offer by the Railroad to waive any remedies which it might otherwise possess for the enforcement of any and all such obligations of the Manufacturer as against such assignee, which offer shall be conclusively presumed for all purposes to be accepted by any assignee by payment to the Manufacturer or such assignee's predecessor in title under the Agreement of the consideration for the purchase and assignment of this Agreement.

The term "Manufacturer" whenever used in this Agreement means General Motors Corporation, (Electro-Motive Division); provided, however, that to the extent that the right, title and interest of the Manufacturer hereunder shall have been assigned from time to time, the term "Manufacturer" with respect to such right, title and interest shall mean the assignee or assignees for the time being thereof, but this provision shall not limit or affect the obligations or liability of General Motors Corporation, (Electro-Motive Division), under the terms of this Agreement or impose such obligations or liability upon such assignee or assigness.

In the event of any such sale, transfer or assignment, or successive sales, transfers or assignments by the Manufacturer, of title to the Locomotives and of the Manufacturer's rights hereunder in respect thereof, the Railroad will, whenever requested by such vendee, transferee or assignee, change the stencils to be painted on each side of each unit of each of the Locomotives so as to indicate the title of such vendee, transferee or assignee to such Locomotives and its succession to the rights of the Manufacturer hereunder, such stencils to be lettered as shall be specified by said vendee, transferee or assignee.

16. SUCCESSORS TO AND ASSIGNMENTS BY THE RAILROAD. The Railroad hereby represents and warrants that its execution of this Agreement and its assumption and undertaking of the

obligations, duties and liabilities hereof have been expressly authorized and that all the obligations of the Railroad then existing or to accrue under this Agreement shall be assumed as a general obligation by any person or corporation acquiring title to or possession of the railways and properties of the Railroad, and that upon any sale, lease, transfer or assignment of said railways or properties any person or corporation acquiring title thereto or possession thereof shall also, as a condition to such acquisition, be bound by all such obligations.

The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or further pledge, hypothecate or encumber in any way, or permit the encumbrance of or transfer possession of said Locomotives to any other firm, person or corporation without first obtaining the written consent of the Manufacturer to such sale, assignment, encumbrance or transfer.

The term "Railroad" whenever used in this Agreement means, before any assignment of the rights of the Railroad hereunder as herein provided, the Railroad, its successors, assigns, and after any such assignment shall include the Railroad and any assignee thereof, except only in so far as the Manufacturer may specifically, in writing, relieve the Railroad or such assignee from the obligations hereof.

17. DEFAULTS. In the event that any one or more of the following events of default shall occur, to-wit:

(a) The Railroad fails to pay in full when due any installment of principal or of interest at the time and in the manner hereinbefore contracted to be paid as provided in Article 3 hereof; or

(b) The Railroad shall, for more than 30 days after the Manufacturer shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed; or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, is filed by or against the Railroad



and the trustee or trustees fail to adopt this Agreement within 30 days of the date of his or their appointment unless such petition is dismissed prior to the expiration of such 30 days; or

(d) Any proceedings are commenced by or against the Railroad for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganization, arrangements, compositions or extensions and the trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with such proceedings fail to adopt and assume and agree to perform the terms and obligations of this Agreement within 30 days of the date of his or their appointment, unless such proceedings are dismissed prior to the expiration of such 30 days; or

(e) The Railroad transfers, attempts to transfer or suffers the transfer of its interest in or under this Agreement or possession of the Locomotives without the consent of the Manufacturer;

then at any time after the occurrence and during the continuance of such an event of default the Manufacturer may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire purchase price of the Locomotives, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of such balance of purchase price and interest shall, to the extent permitted by law, bear interest from the date of such declaration at a rate per annum (calculated on a 30-day month 360-day year basis) which shall be 1-1/2% per annum above the Current Lending Rate as defined in Article 3 in effect at Bankers Trust Company on and after the date hereof, which rate per annum shall be changed as and when said Current Lending Rate shall change as provided in Article 3, and the Manufacturer shall thereupon be entitled to recover judgment for the entire unpaid balance of the purchase price of the Locomotives so payable, with interest thereon as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Manufacturer may at its election (and if before sale or before full performance of this Agreement all costs and expenses of the Manufacturer incidental to any such default and to the enforcement by the Manufacturer of the provisions hereof, and all sums which shall then have become due and payable by the Railroad hereunder, other than such part of said purchase price as shall have become due only because of a declaration under this paragraph as aforesaid, shall have been paid by the Railroad, and all other existing defaults shall have been remedied, or provisions therefor satisfactory to the Manufacturer shall have been made, then and in every such case the Manufacturer will) waive any such event of default and its consequences and rescind and annul any such declaration or termination by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration or termination had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall limit or affect the Manufacturer's right, upon any other default, or impair any rights or remedies consequent thereon.

18. REMEDIES. Upon the happening of an event of default as hereinabove provided then at any time thereafter and during the continuance of such default the Manufacturer may, without any notice or demand except as required by this Agreement, or except to the extent necessary in order to comply with any mandatory requirements of law, take or cause to be taken by its agent or agents immediate possession of the Locomotives, or any of them, and/or any replacements and improvements, and all present and future attachments and accessories thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from the use and possession of the Railroad and for such purpose may enter upon the Railroad's premises where the Locomotives may be located, and may use and employ in connection with such removal any supplies, services and aids, and any available trackage and other facilities or means of the Railroad with or without process of law; and the Railroad shall deliver the Locomotives with all replacements, improvements, equipment, attachments and accessories thereof, at its own cost at such place or places on its railroad as the Manufacturer may reasonably designate and for such purpose move or draw the Locomotives in the usual manner and at the customary speed of trains, and in case of such retaking or

delivery the Manufacturer shall have the right to store the same upon the premises of the Railroad without charge until the Manufacturer shall desire to remove the same therefrom. It is hereby expressly agreed by the Railroad that performance of this Agreement to deliver the Locomotives as hereinbefore provided is of the essence of the Agreement between the parties and that, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Railroad requiring specific performance hereof. It is further expressly agreed by the Railroad that, notwithstanding any election by the Manufacturer to retain possession of the Locomotives or any sale or lease of the Locomotive by the Manufacturer, the Railroad shall not be released from any of its obligations hereunder, including, but not by way of limitation, its obligations under Article 4 hereof.

Upon the happening of an event of default as hereinbefore provided then at any time thereafter, and after declaring the entire purchase price immediately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Locomotives as is hereinbefore in this Article 18 provided), may at its election retain the Locomotives as its own and make such disposition thereof as the Manufacturer shall deem fit, and in such event all the Railroad's rights in the Locomotives will thereupon terminate and all payments made by the Railroad may be retained by the Manufacturer as compensation for the use of the Locomotives by the Railroad; or the Manufacturer, with or without retaking possession thereof, may, at its election, sell the Locomotives, or any of them, and any such replacements, improvements, equipment, attachments and accessories, free from any and all claims of the Railroad, or of any other party claiming by, through or under it at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Locomotives, shall be credited on the amount due to the Manufacturer under the provisions of this Agreement. Written notice of the Manufacturer's election to retain the property for its own use may be given to the Railroad by telegram or registered mail at any time during a period of thirty (30) days after declaring the entire purchase price immediately due and payable as hereinabove provided.

To the extent permitted by any such legal requirements, any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may fix, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine in compliance with any such legal requirements, provided that the Railroad shall be given written notice of such sale as provided in any such applicable legal requirements, but in any event no less than ten (10) days prior thereto, by telegram or registered mail addressed to the Railroad. To the extent not prohibited by any legal requirements then in force and applicable to such sale, the Manufacturer may itself bid for and become the purchaser of the Locomotives, or any of the, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in the next to the last paragraph of this Article 18), and in payment of such purchase price the Manufacturer shall be entitled to the extent aforesaid to have credited on account thereof all sums due to the Manufacturer by the Railroad hereunder.

Each and every power or remedy hereby specifically given to the Manufacturer shall be in addition to every other power or remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy, or shall be construed to be a waiver of any default, or an acquiescence therein.

If, after applying all sums of money realized by the Manufacturer under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall and it hereby undertakes and promises to pay the amount of such deficiency to the Manufacturer upon demand, and if the Railroad fails to pay such deficiency the Manufacturer may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Manufacturer, there shall remain a surplus in the possession of the Manufacturer, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable attorneys' fees and other costs and expenses incurred by the Manufacturer in enforcing its remedies under the terms of this Agreement or otherwise provided at law or in equity. In the event that the Manufacturer brings any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable attorneys' fees and such other costs and expenses, and the amount thereof shall be included in such judgment.

19. APPLICABLE STATE LAWS. Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

The Railroad, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of the Locomotives and to sell them and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Manufacturer's rights hereunder, except such notices as are expressly required by the terms of this Agreement, and any and all rights of redemption.

20. EXTENSION NOT A WAIVER. Any extension of time granted by the Manufacturer to the Railroad for the payment of any sum due under this Agreement, whether that extension be for an intermediate payment, or for final payment, shall not be deemed a waiver of the title of the Manufacturer reserved hereunder nor of any of its rights and remedies hereunder or otherwise existing.

21. RECORDING. The Railroad will cause this Agreement and any supplements hereto and any assignments thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law or reasonably requested by the Manufacturer for the purposes of proper protection, to the satisfaction of counsel

for the Manufacturer, of its title to the Locomotives and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Manufacturer certificates or other evidences of all such filing, registration, and recording, and an opinion of Railroad's counsel with respect thereto, satisfactory to the Manufacturer.

22. PAYMENT OF EXPENSES. The Railroad will pay all costs, charges and expenses, including counsel fees except the counsel fees of General Motors Corporation, (Electro-Motive Division), in connection with the preparation, printing, execution, acknowledgment, filing, registering and recording of this Agreement, of the first assignment by the Manufacturer of any interest of the Manufacturer in this Agreement and related documentation, including stamp and other taxes, and of title to the Locomotives, of the first assignment by the first assignee of the Manufacturer, of any instrument supplemental hereto or amendatory hereof and of any declaration of the payment in full of the purchase money due hereunder.

23. NOTICE. Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Railroad at 6900 South Central Avenue, Chicago, Illinois or at such other address as may have been furnished in writing to the Manufacturer by the Railroad. Any notice hereunder to Manufacturer shall be deemed to be properly served if delivered or mailed to its offices located in LaGrange, Illinois 60525, or at such other address as may have been furnished in writing to the Railroad by Manufacturer. Any notice hereunder to any assignee of Manufacturer or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Manufacturer or the Railroad, as the case may be, by such assignee.

24. EXECUTION OF COUNTERPARTS. This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together will constitute but one and the same contract, which will be sufficiently evidenced by any such original counterpart.

25. ARTICLE HEADINGS. All article, paragraph or division headings are inserted for convenience only and will not affect any construction or interpretation of this Agreement.

26. MODIFICATION OF AGREEMENT. This Agreement of conditional sale, together with the specifications hereinabove referred to, constitutes the entire agreement between the Railroad and the Manufacturer with respect to the sale of the Locomotives herein referred to. No variation or modification of this Agreement and no waiver of any of its provisions or conditions will be valid unless in writing and signed by the duly authorized officers of the Manufacturer and the Railroad.

27. LAW GOVERNING. This Agreement shall be construed to be a contract made under and pursuant to the laws of the State of Illinois; provided, however, that the Manufacturer and the Railroad shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, General Motors Corporation, (Electro-Motive Division), has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful resolutions; and The Belt Railway Company of Chicago has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful resolutions, all as of the day, month and year first above written.

GENERAL MOTORS CORPORATION,  
(ELECTRO-MOTIVE DIVISION)


By  Vice President 

(Corporate Seal)

ATTEST:

  
Assistant Secretary

THE BELT RAILWAY COMPANY OF CHICAGO

By  Vice President

(Corporate Seal)

ATTEST:

  
Assistant Secretary

STATE OF ILLINOIS     )  
                               :   SS.:  
 COUNTY OF COOK        )

On this            day of August, 1972, before me personally appeared     B.B. BROWNELL           , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION, (ELECTRO-MOTIVE DIVISION), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of the Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Julia C. Clair  
 Notary Public

(Notarial Seal)

My Commission Expires

*July 11, 1976*

STATE OF ILLINOIS     )  
                               :  
 COUNTY OF COOK        )

On this *18<sup>th</sup>* day of August, 1972, before me personally appeared *D.R. TURNER*           , to me personally known, who being by me duly sworn, says that he is a Vice President of THE BELT RAILWAY COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lucille K. Know  
 Notary Public

(Notarial Seal)

My Commission Expires

*JUNE 2<sup>ND</sup>, 1974*



AGREEMENT AND ASSIGNMENT

Dated as of August 16, 1972

GENERAL MOTORS CORPORATION,  
(ELECTRO-MOTIVE DIVISION)

and

BANKERS TRUST COMPANY

AGREEMENT AND ASSIGNMENT, dated as of August 16, 1972, between GENERAL MOTORS CORPORATION, (ELECTRO-MOTIVE DIVISION), a corporation organized under the laws of the State of Delaware, with an office in the Village of McCook and State of Illinois (hereinafter called the "Manufacturer"), and BANKERS TRUST COMPANY, a corporation duly organized and existing under the laws of the State of New York, with an office in the City of New York, State of New York (hereinafter called the "Assignee").

WHEREAS, the Manufacturer and THE BELT RAILWAY COMPANY OF CHICAGO, a corporation organized under the laws of the State of Illinois, with an office in the Village of Bedford Park, Illinois (hereinafter called the "Railroad"), have entered into a Conditional Sale Agreement dated as of August 16, 1972 (hereinafter called the "Conditional Sale Agreement"), covering the manufacture, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Railroad of six (6) Locomotives bearing the Railroad's Numbers 490 through 495, all as more particularly described therein (a counterpart of the Conditional Sale Agreement being prefixed hereto), for an aggregate purchase price of \$1,523,472.30 of which the Railroad is to pay to the Manufacturer in installments as therein provided.

NOW, THEREFORE, this Agreement and Assignment Witnesseth that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. The Manufacturer hereby sells, assigns, transfers and sets over unto the Assignee, its successors and assigns, all the right, title and interest of the Manufacturer under the Conditional Sale Agreement (except the right to manufacture and reimbursement, to which General Motors Corporation, (Electro-Motive Division), is entitled, for taxes as provided in Article 4 thereof) and all the right, title and interest of the Manufacturer in and to each locomotive (each such locomotive or locomotives being hereinafter called "Locomotive" or "Locomotives") in respect of which the Assignee shall make payment as provided in Article 6 hereof and in and to any and all amounts (other than those hereinabove excluded) which may be or become due or owing by the Railroad to the Manufacturer under the Conditional Sale Agreement, together with all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement (without any recourse, however,

against the Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement); provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Manufacturer or of any successor or successors to its manufacturing properties and business in respect of its obligations to construct and deliver the Locomotives or in respect of its obligations contained in Articles 9 and 14 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Manufacturer or the Assignee under the Conditional Sale Agreement. Notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Railroad in respect of the Locomotives shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer and any successor or successors to its manufacturing properties and business. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but without expense and liability to the Manufacturer and for the sole benefit of the Assignee.

2. The Manufacturer will construct the Locomotives in full and complete accordance with the Conditional Sale Agreement and will deliver them on completion to the Railroad free of all liens and encumbrances and in accordance with the provisions of the Conditional Sale Agreement; notwithstanding this Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement, set forth to be performed and complied with by the Manufacturer. The Manufacturer further represents and warrants that it has good and lawful right to sell the Locomotives as aforesaid; and that it will warrant and defend the same against the demands of all persons whomsoever based on claims originating prior to the delivery of the Locomotives by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

3. The rights of the Assignee to \$200,000.00 of the purchase price of each Locomotive (subject to reduction as in the Conditional Sale Agreement provided) accepted by the Railroad and interest thereon, as well as any other rights which have been assigned hereunder, shall not be subject to any defense, offset, counterclaim or recoupment whatsoever arising out of a breach by the Manufacturer or by any successor or successors to its manufacturing properties or business of any obligations in respect of the manufacture or delivery of the Locomotives or under Articles 9 and 14 of the Conditional Sale Agreement nor subject to any defense, offset, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer or the successor or successors to its manufacturing business. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer and the successor or successors to its manufacturing properties and business and shall not be enforceable against the Assignee or any party or parties in whom title to the Locomotives or any of them or the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this assignment or transfer or of successive sales, assignments or transfers. Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Railroad and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the Locomotives, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right.

4. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously lettered on each side of each unit of such Locomotive, at the time of delivery of each of the Locomotives to the Railroad, a stencil painted in a contrasting color containing, in letters not less than one inch in height, the following legend:

"Bankers Trust Company, Owner."

5. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein

or in the Locomotives therein described.

6. The Assignee will, on the date of settlement with respect to each Locomotive accepted by the Railroad as provided in the Conditional Sale Agreement, pay to the Manufacturer \$200,000.00 representing as stated in the Conditional Sale Agreement the remaining purchase price of such Locomotive (subject to reduction as therein provided), provided the Assignee is in receipt of the following documents, in form and substance satisfactory to it:

(a) A bill of sale from the Manufacturer to the Assignee evidencing transfer to the Assignee of title to the Locomotive or Locomotives, and warranting that at the time of execution and delivery of such bill of sale the Manufacturer has legal title to such Locomotive or Locomotives and good and lawful right to sell such Locomotive or Locomotives and that the Manufacturer had, at the time of delivery of such Locomotive or Locomotives to the Railroad under the Conditional Sale Agreement, legal title to such Locomotive or Locomotives, free and clear of all claims, liens and encumbrances of any nature, except only the rights of the Railroad under the Conditional Sale Agreement, and has not done anything since the time of delivery of such Locomotive or Locomotives to the Railroad under the Conditional Sale Agreement, and has no knowledge of anything, which would impair, disturb, or affect such title and such title is free and clear of all such claims, liens and encumbrances;

(b) A Certificate of Acceptance signed by an authorized representative of the Railroad stating that the Locomotives covered by such Certificate have been inspected and accepted by him on behalf of the Railroad as conforming in all respects to the requirements and provisions of the Conditional Sale Agreement, and further stating that there was plainly, distinctly, permanently and conspicuously lettered on each side of each unit of the Locomotive at the time of its acceptance, a stencil painted in a contrasting color containing, in letters not less than one inch in height, the following legend:

"Bankers Trust Company, Owner."

(c) A duplicate of the Manufacturer's invoice covering each Locomotive so accepted, reflecting the receipt by the Manufacturer of the first installment payment with respect to such Locomotive.

(d) A certificate of the Railroad executed by its President or any Vice President, dated as of such date of settlement, as to the correctness of the invoice or invoices referred to in paragraph (c) above and stating that the Railroad is in full compliance with Article 7 of the Conditional Sale Agreement.

(e) An Opinion of Counsel for the Manufacturer, dated such date of settlement, stating (i) that the Manufacturer is a duly organized and existing corporation in good standing under the laws of its state of incorporation and has the power and authority to execute, deliver and carry out the terms and provisions of the Conditional Sale Agreement and this Agreement and Assignment and to own its properties and to carry on its business as now conducted, (ii) that the Conditional Sale Agreement and this Agreement and Assignment have been duly authorized, executed and delivered by the Manufacturer and each is a valid instrument binding upon the Manufacturer and enforceable against the Manufacturer in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights, (iii) that title to the Locomotives is validly vested in the Assignee, free of all claims, liens and encumbrances, except only the rights of the Railroad under the Conditional Sale Agreement, and (iv) that the Assignee is vested with all the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment;

(f) An Opinion of Counsel for the Railroad satisfactory to the Assignee, dated such date of settlement, stating (i) that the Railroad is a duly organized and existing corporation in good standing under the laws of the State of Illinois,

(ii) that the Railroad has the corporate power and authority to enter into and carry out the terms and provisions of the Conditional Sale Agreement and to consent to the Agreement and Assignment thereof and that all corporate action necessary in connection therewith has been duly taken, (iii) that the Conditional Sale Agreement and the Consent to the Agreement and Assignment have been duly authorized, executed and delivered by the Railroad, (iv) that the Conditional Sale Agreement and Consent to the Agreement and Assignment are valid, binding and enforceable in accordance with their respective terms, (v) that no consent or approval of the Interstate Commerce Commission or of any other governmental authority or regulatory body is required in connection with the execution, delivery and/or performance of the Conditional Sale Agreement, the Agreement and Assignment or the Consent to the Agreement and Assignment or to render the same valid and enforceable, (vi) that the Conditional Sale Agreement and this Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recording in any State of the United States of America is necessary for the protection of the rights of the Assignee, and (vii) that neither the execution and delivery of the Conditional Sale Agreement or the Consent to the Agreement and Assignment, nor the consummation of the transactions therein contemplated, nor compliance with the terms and provisions thereof will contravene any provision of law, statute, rule or regulation to which the Railroad is subject or any judgment, decree, franchise, order or permit applicable to the Railroad or will conflict or will be inconsistent with, or will result in any breach of, any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, security interest, charge or encumbrance upon any of the Locomotives pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which the Railroad is a party or by which it may be bound or to which it may be subject.

(g) Evidence satisfactory to the Assignee that the Conditional Sale Agreement and this Agreement and Assignment have been filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

(h) Such other documents as the Assignee shall reasonably request.

Anything herein to the contrary notwithstanding, the Assignee shall not be obligated to make any payment hereunder after the Prepayment Date or Extended Prepayment Date, as the case may be, as those terms are defined in Section 3 of the Conditional Sale Agreement.

7. The Assignee or its assignees may assign their respective rights under the Conditional Sale Agreement and under this Agreement and Assignment, as a whole in respect of all or any designated number of the Locomotives, including the right to receive any payments due or to become due to it from the Railroad thereunder in respect to such Locomotives. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

8. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was lawfully executed for a valid consideration and that it is a valid existing agreement and, according to its terms, binding upon the parties thereto and that said agreement is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises, to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to do.



9. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Railroad. Although this Agreement and Assignment is dated for convenience August 16, 1972, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

10. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the Manufacturer and the Assignee have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, as of the day and year first above written.

GENERAL MOTORS CORPORATION,  
(ELECTRO-MOTIVE DIVISION)

By *B. D. Dammelf* *BD*  
Vice President

(Corporate Seal)

ATTEST:

*J. Lawyer*  
Assistant Secretary

BANKERS TRUST COMPANY

By *A. Whitman* *AW*  
Vice President

(Corporate Seal)

ATTEST:

*A. Whitman*  
Assistant Secretary

STATE OF ILLINOIS     )  
                               :   SS.:  
 COUNTY OF COOK        )

On this *18th* day of August, 1972, before me personally appeared **B.B. BROWNELL**, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION, (ELECTRO-MOTIVE DIVISION), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of the Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Zula C. Clair*  
 \_\_\_\_\_  
 Notary Public

My Commission Expires *July 11, 1976* (Notarial Seal)

STATE OF NEW YORK     )  
                               :   SS.:  
 COUNTY OF NEW YORK    )

On this *17th* day of August, 1972, before me personally appeared **A. WHITMAN MARCHAND**, to me personally known, who being by me duly sworn, says that he is a Vice President of BANKERS TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*David Abramson*  
 \_\_\_\_\_  
 Notary Public

My Commission Expires

(Notarial Seal)  
**DAVID ABRAMSON**  
 NOTARY PUBLIC, STATE OF NEW YORK  
 No. 41-0007786  
 Qualified in Queens County  
 Commission Expires March 30, 1973

CONSENT TO THE AGREEMENT AND ASSIGNMENT

THE BELT RAILWAY COMPANY OF CHICAGO hereby consents to, and acknowledges due notice of, the assignment made by the foregoing Agreement and Assignment dated as of August 16, 1972.

THE BELT RAILWAY COMPANY OF CHICAGO

By

*H. B. Turner*

Vice President

(Corporate Seal)

ATTEST

*Domariaty*  
Secretary

STATE OF ILLINOIS     )  
                                  : ss.:  
COUNTY OF COOK        )

On this 18<sup>th</sup> day of August, 1972, before me personally appeared *D. R. Turner*, to me personally known, who, being by me duly sworn, says that he is a Vice President of the Belt Railway Company of Chicago, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Lucille Kuraw*  
Notary Public

(Notarial Seal)

My Commission Expires

JUNE 2<sup>nd</sup>, 1974